AKITEK BERJASA

v.

CITY MOTORS SDN. BHD. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[CIVIL SUIT NO. P 612 OF 1977]

CONTRACT: *Claim by architect for work done - Oral agreement - Change of zoning - Professional fees - Abandonment charges - Quantum meruit.*

The defendants were the owners of 2 lots of land which were zoned "residential". The defendants wanted to construct a 13 storey hotel and for this purpose, the zoning of the lands had to be changed from "residential" to "commercial". The plaintiff, an architect, orally agreed to apply on behalf of the defendants for the change of zoning if the defendants agreed that if the plaintiff was successful in obtaining the zoning change, the defendants would appoint him the architect for the 13 storey hotel. The plaintiff failed to comply with certain procedural requirements and his application for change of zoning was rejected. The plaintiff then sent letters to the defendants requesting for payment for his services. The defendants refused, arguing that the plaintiff had agreed to apply for the change of zoning on behalf of the defendants without charging the defendants any fee but that if the change of zoning was approved, the defendants would appoint the plaintiff as their architect for the construction of the 13 storey hotel.

Held:

[1] On the evidence, the defendant's version of the disputed agreement, i.e., that the plaintiff had agreed to render his services with regard to the application for change of zoning, free of charge, was accepted.

[2] There is no evidence at all that the project had been abandoned by the defendants within the meaning of Exh. P1. On the other hand, there is evidence that the plaintiff had abandoned his project by his non-compliance with the Dewan Bandaraya's instructions to amend his building plans. The plaintiff's claim for professional fees must therefore fail.

[3] The plaintiff is also not entitled to a sum on *quantum meruit* because to succeed on this, the plaintiff has to prove that the defendants had derived some benefits from the work performed by the plaintiff and under this agreement, the defendants had obtained no benefit at all.

[4] In the absence of an express contract, an architect is not entitled to claim for work done by him, if the plans prepared are not approved or made use of by the person who asked him to prepare the plans.

[Plaintiff's claim dismissed with costs.]

Case referred to:

Abraham Ho Ah Loke v. William Manson-Hing [1949] MLJ 37

JUDGMENT

Eusoff Chin J:

The Plaintiff's Statement of Claim is as follows:

"STATEMENT OF CLAIM"

1. The Plaintiff's claim against the Defendants is for the sum of RM90,031 being amount owning by the Defendants to the Plaintiffs for professional services rendered by the Plaintiffs to the Defendants at the request of the Defendants, their servants or agents.

PARTICULARS

See Statement of Account annexed hereto marked "A".

2. In spite of repeated requests for payment, the Defendants have failed, refused or neglected to pay up the said sum or any part thereof.

3. And the Plaintiffs claim against the Defendants

   (a) The sum of RM90,031;

   (b) Interest thereon at the rate of 6% per annum from the date of judgment to the date of satisfaction; and

   (c) Costs.

Dated this day of February 1977.

Sgd:
Lewis & Co.
Solicitors for Plaintiffs

The Statement of Account annexed as annexure 'A' is as follows:

JOB: Proposed 19-storey Hotel & Showroom on Lots 533 & 534, s. 67, Jalan Bukit Bintang, Kuala Lumpur

Professional charges for the abandonment of project

(a) Total estimate cost of project = 87351 sq.' x RM40 = RM3,501,240

Estimated cost of piling = RM 100,000

Total = RM3,601,240

(b) For taking client's instructions, preparing sketch designs sufficient to indicate the architect's interpretation of the client's instructions, and preparing preliminary drawing and particulars sufficient to enable applications to be made for planning approval, and for "in principle" approval in connection with any specific by-law, the fee shall be one-third of the appropriate percentage due on the estimated cost of such works.

(c) Professional charges = 7½% x RM3,601,240 = RM270,093

Professional charges to this bill = RM270,093 / 3

= RM 90,031

(Dollars: Ninety thousand and thirty-one only)

AKITEK BERJASA
Sgd:
...
LIM PENG KEANG
DIP.ARCH., APAM., RIBA., MSIA.,

The specially Indorsed Writ is to be found at p. 1 to 5 of the Bundle of Pleadings which was filed in Court on 1 April 1984. The Bundle of Pleadings includes affidavits sworn by both parties which were filed for use in earlier chamber proceedings.

In the course of the trial the plaintiff's Counsel had applied to substitute Lim Peng Keang as the plaintiff for Akitek Berjasa which I allowed with no objection by the defence Counsel.

The plaintiff (P.W.1) an architect, in his evidence alleged that some time in 1975 he had met Foo Wan Hoong and Foo Wan Kien (representing the two defendants). He learned that the defendants were the owners of lands lots 533 and 534 Bukit Bintang, Kuala Lumpur. The lands were zoned by the Dewan Bandaraya (Municipality) of Kuala Lumpur under 'residential'. The defendants wanted to construct a 13 storey hotel. To do that, the zoning of the lands had first to be changed from 'residential' to 'commercial'. The plaintiff said that he had agreed to apply on behalf of the defendants for the change of the zoning from 'residential' to 'commercial' if the defendants agreed that, if P.W.1 was successful in getting the change of zoning approved by the Dewan Bandaraya, the defendants would appoint him the architect for the 13 storey hotel which the defendants had intended to build. The defendants had agreed to this arrangement. No written agreement was prepared by the plaintiff.

The plaintiff then submitted on behalf of defendants, the application for the change of the zoning to the Dewan Bandaraya (application at A B 3 & 6 to 12). The procedure was to get the change of zoning approved by the Dewan Bandaraya first. Then the next step was the submission of proper building plans for the construction of the proposed hotel, which was termed the application for planning approval. However, the plaintiff went ahead to submit building plans even before the change of zoning was approved. According to the planning officer of the Dewan Bandaraya, the building plans if submitted would be considered by the Dewan Bandaray's technical committee. Consequently, the technical committee called the plaintiff to a number of meetings at which the technical committee has asked the plaintiff to make various amendments to his plans. The plaintiff, however, failed to comply with the instructions of the technical committee. The Dewan Bandaraya therefore assumed that the plaintiff was no longer interested and had abandoned his proposed project. On 4 September 1976 the Dewan Bandaraya sent a letter (A B 29) to the plaintiff to inform him that the application for change of zoning had been rejected. Another letter (A B 43) dated 27 April 1977 by the Dewan Bandaraya in reply to a letter sent by the plaintiff stated that the planning committee had rejected the application for the change of zoning at its meeting on 25 August 1976.

The plaintiff had sent his bill to the defendants requesting the defendants to pay RM4000 for his services "the preparation of Sketch Plans sufficient for the conversion and Planning Approval of Commercial Building", (A B 25 & 26). The defendants refused to pay this amount. The plaintiff sent a warning letter that if his fees were not paid, he would charge his professional fee for abandonment charges which would be 2½ of the total estimated cost of the project (A B 33 & 36).

On 25 January 1977, the plaintiff sent his bill asking the defendants to pay his professional fees of RM90,031 for abandonment of project. The letter as quoted above attached to the Statement of Claim.

The defendants refused to pay this RM90,031.

The statement of defence at pp. 31 - 35 said that the defendants had employed another architect in 1974 to get the change on zoning approved, but had been unsuccessful. The defence also pleaded that the plaintiff had agreed to apply for the change of zoning on behalf of the defendants any fee but that if the change of zoning was approved, the defendants would appoint the plaintiff as their architect for the construction of a 13 storey hotel to be constructed by the defendants on their lands. The affidavit of 1st defendant at p. 11 in the Bundle of Pleadings, para 5 to which the plaintiff's Counsel had referred when examining P.W.1 in Court, stressed that no fee was payable to the plaintiff for the work in applying for his change in the zoning if the application was unsuccessful.

Having heard the case, I dismissed the plaintiff's claim with costs.

There was no written agreement between the plaintiff and the defendants. I believe the oral agreement between them was that the plaintiff would get the change of zoning approved by the Dewan Bandaraya, and after the approval had been obtained the defendants would appoint the plaintiff as their architect to construct a 13 storey hotel on the defendant's land.

The plaintiff had alleged in his evidence that he in fact agreed to charge no fee only to fill the application form for the change of zoning from 'residential' to 'commercial'. I do not think this is the truth. The application form (A B 6-12) is quite simple to fill which the defendants could easily have done. My finding is that the plaintiff had just commenced his practice in 1976 in Kuala Lumpur. He had admitted he was "relatively unknown in 1976"; and that if he could be appointed to be the architect for the defendants' proposed hotel project his professional fees could amount to RM270,000. The plaintiff had also admitted in his evidence that Mr. Foo Wan Kien had told him (plaintiff) "not to charge him any fee for doing the conversion of this land from 'residential 'to' commercial' ". The plaintiff knew that to apply for conversion he had to submit the application form and other relevant documents enumerated in his letter at A B 3 which included the submission of sketch plans, site plans, survey plan, and layout plans. My finding on this issue is that the plaintiff had agreed to render his services with regard to the application for change of zoning, free of charge. His services included the preparation of the various plans mentioned in his application (A B 3).

Both P.W.2 (the Chairman of P.A.M) and P.W.4 (the planning officer of the Dewan Bandaraya) had given evidence that building plans for the hotel projects were not yet required to be submitted until the application for change of zoning was approved. However, without the instruction of the defendants, the plaintiff had gone ahead on his own, to prepare and submit building plans for the proposed hotel. The plaintiff attended 3 meetings with the technical committee of the Dewan Bandaraya - on 15 November 1975, 27 April 1976 and 26 June 1976 - at which he was required to amend his plans. According to P.W.4 at the third meeting, the plaintiff had still not complied with 7 requirements put up by the Dewan Bandaraya. Because of his non-compliance with these requirements, the Dewan Bandaraya assumed that the plaintiff had abandoned his project. The plaintiff is now asking the defendants to pay his "professional charges for the abandonment of project". According to P.W.2 (P.A.M Chairman), under para. 3 (vii) & (viii) of the P.A.M Conditions of Engagement and Scale of Professional Charges, (Exh. P1) "abandonment of the project" means abandonment by the client. Paragraph 3(viii) of Exh. P1 clearly states that a project is abandoned if

(a) the Client notifies the architect to that effect; or

(b) the Client fails to give instructions to proceed to the next stage within three months after receiving a written request from the architect asking for such instructions.

There is no evidence at all that the project had been 'abandoned' within the meaning of Exh. P1. In other words the defendants never abandoned the project. On the other hand, there is evidence by P.W.4 the town planner, who said that the plaintiff had abandoned his project by his non-compliance with the Dewan Bandaraya's instructions to amend his building plans.

I therefore find that the plaintiff's claim for professional fees for 'abandonment of project' based on para 3 (vii) or (viii) must fail, and I dismiss his claim with costs.

The plaintiff's Counsel in his submission asked the Court to at least consider whether the plaintiff should be paid a reasonable sum on a *quantum meruit.* I do not think that the plaintiff is entitled to that either. To succeed on this, the plaintiff has to prove that the defendants had derived some benefits from the work performed by the plaintiff. The defendants had obtained no benefit at all under the agreement. In *Abraham Ho Ah Loke v. William Manson-Hing* [1949] MLJ 37, it was held that in the absence of an express contract, an architect is not entitled to claim for work done by him, if the plans prepared are not approved or made use of by the person who asked him to prepare the plans. In the present case, there is no evidence at all that the defendants had asked the plaintiff at any time, to prepare the building plans.

Also found at [1986] 1 CLJ 31